



Public Notice

US Army Corps 2000
of Engineers
Baltimore District

DATE: April 7,

In Reply Refer to CENAB-OP-RPA

Subject: Proposal to reissue with modifications, reissue without modifications or to not reissue the Pennsylvania State Programmatic General Permit (PASPGP-1), for a five year period

This Public Notice is issued jointly by the Philadelphia, Pittsburgh, and Baltimore Districts of the U.S. Army Corps of Engineers.

On March 1, 1995 the District Engineers for Baltimore, Philadelphia and Pittsburgh Districts, issued the Pennsylvania State Programmatic General Permit (PASPGP-1) for a five year period. On February 29, 2000 we issued Special Public Notice #00-011 announcing that the PASPGP-1 was reissued without modification for eight months. As a result, the reissued PASPGP-1 will expire on October 31, 2000, unless a decision is made to reissue it with modification, reissue without modification, suspend or revoke it by or before that date, whichever occurs first.

The Corps has completed its review and evaluation of the PASPGP-1 and has released its findings and recommendations in the PASPGP-1 Monitoring Report dated March 2000. The Report is available upon written request to the Baltimore District at the address listed below or a copy may be attained through the Corps web site at www.nab.usace.army.mil/Regulatory/Pubs/paspgp.htm.

The purpose of this 45-day Public Notice is to request comments on whether to reissue with modifications, or reissue without modifications for a five year period or to not reissue the Pennsylvania State Programmatic General Permit (PASPGP-1). Comments are requested by May 22, 2000.

Therefore we are requesting comments on the following proposed modifications that would be incorporated into a new **Pennsylvania State Programmatic General Permit –2 (PASPGP-2)**. A copy of the current version (December 1995, reissued March 2000) of the PASPGP-1 is attached, which shows the proposed modifications, additions are underlined and deletions are crossed through.

1. To reduce the upper threshold of impacts to waters of the United States, including jurisdictional wetlands from five acres to one acre for a single and complete project to ensure no more than minimal impacts to the aquatic environment. Currently permit applicants have a right to apply for, and expect that any project under five acres of impact will qualify for and be authorized by the PASPGP-1. Based on our experience and our evaluation of the program, we have found that when impacts are proposed for over one acre, an Individual Permit evaluation is often appropriate. This change in the upper threshold would not adversely affect the overall processing time, or service to the public, since the vast majority of applications in Pennsylvania propose to impact less than one acre of Waters of the United States including jurisdictional wetlands. In practice, applications for impacts of one acre or more under the PASPGP-1 have proven to require a process that involves analysis comparable to Corps Individual Permits. This provides no additional benefit to the applicants, nor the environment. With the proposed change, all projects impacting more than one acre of Waters of the United

States including jurisdictional wetlands will be evaluated by the Corps using Corps Individual Permit (IP) procedures or, if eligible, for minimal impacts using Nationwide Permit (NWP) procedures for those NWPs that have not been suspended in Pennsylvania.

2. To make proposed activities within a component of a National Wild and Scenic River System, or within a river officially designated by Congress as a “study river” for possible inclusion in the system, eligible for authorization under the PASPGP-2, using reporting procedures, with the condition that the **Applicant** coordinates with the Federal agency i.e. the National Park Service (NPS) or United States Forest Service (USFS)) having direct management responsibility for the river, to obtain a written determination that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. This determination must be included with the permit application. The list of National Wild and Scenic Rivers has been updated on the attached PASPGP.

3. That regulated activities eligible for multiple PADEP authorizations such as PADEP General Permits, Waivers, and Letters of Authorization, are “Reporting” and must receive separate written authorization from the Corps if the total *cumulative* impact of a proposed single and complete project, exceeds 250 linear feet of streams, rivers, or other jurisdictional watercourses, including open water areas.

4. To require that regulated activities eligible for multiple PADEP authorizations such as PADEP General Permits, Waivers and Letters of Authorization are not eligible for PASPGP-2 and must receive separate Federal authorization from the Corps if the total *cumulative* impact of a single and complete project, exceeds one acre of waters of the United States, including jurisdictional wetlands.

5. That work in wetlands, which qualifies for PADEP General Permit 15 (Private Residential Construction in Wetlands), is not eligible for Federal authorization using PASPGP-2. Such activities will, however, be eligible for Federal authorization using other Corps NWPs or IPs.

6. That work associated with maintenance of bridges and culverts previously authorized by PADEP is authorized under PASPGP-2 without the need to report the project to the Corps.

7. To include the Pennsylvania Wetland Replacement Project (Fund) as an appropriate means to accomplish compensatory mitigation for projects authorized under PASPGP-2, provided the project meets the Fund requirements. Wetland creation sites proposed to be constructed using monies collected through the Fund, will be presented to the Resource Agencies at the monthly Environmental Review Committee (ERC) Meetings for review and comment in accordance with the PASPGP Standard Operating Procedures (SOP).

8. That any Federal or State Resource Agency which requests the Corps to conduct a Federal review of a non-reporting activity must make the request prior to PADEP issuing the PASPGP-2 authorization.

9. To include several new conditions to PASPGP-2 authorizations:

a. That, as a condition of the PASPGP-2, permittees must comply with any conditions of their PADEP authorization, including any conditions of a project-specific Section 401 Water Quality Certification.

b. That, as a condition of the PASPGP-2, permittees must comply with all approved; maps, plans, profiles, or specifications that formed the basis for the PASPGP-2 authorization.

c. That requests for modifications of previously issued permits must be approved by PADEP and, in limited situations, by the Corps.

d. That a project-specific PASPGP-2 authorization is valid for the same period as the project-specific PADEP authorization, not to exceed three years, unless modified or extended.

e. That a project-specific PASPGP-2 authorization is valid to perform the authorized activity one time only, except for maintenance activities associated with the authorized activity.

f. That discharges of asphalt into waters of the United States, including jurisdictional wetlands, is prohibited.

10. To eliminate reporting to the Corps of gravel bar removal activities registered under PADEP General Permit #3 (GP-3), when the activity is within 50 feet of a culvert or bridge, or when the length of stream affected is 250 linear feet or less. This change is due to the fact that some gravel bar removal activities are currently not regulated by the Corps if they do not involve more than “incidental fallback”. The Corps will continue to review activities registered under PADEP GP-3 that impact greater than 250 feet of stream, in order to make a case-by-case determination that the proposed activity will not be performed in a manner, or include related discharges, that would result in more than incidental fallback and/or more than minimal impacts to the aquatic environment.

11. To clarify that the 250-linear-foot threshold for stream impacts, which triggers the need for reporting to the Corps, is applicable to projects which cross a stream transversely (such as utility lines, causeways, cofferdams, and dams), in addition to those projects which run linearly along the stream (such as bank stabilization). The 250 linear foot threshold is to be considered cumulatively for any single and complete project.

The Commonwealth’s Dam Safety and Waterway Management Rules and Regulations establish a Statewide permit program for protecting the waters of the Commonwealth. The Commonwealth’s procedures for the granting of permits require the PADEP to apply evaluation criteria consisting of alternatives analysis (for nonwater dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensation mitigation. The evaluative criteria within the Commonwealth’s program are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. If the PASPGP-1 is reissued as PASPGP-2, the Baltimore District Engineer, in consultation with the District Engineers of Pittsburgh and Philadelphia, will reevaluate the PASPGP-2 within five years to determine if activities have been authorized in accordance with the requirements of the PASPGP-2.

The decision whether to reissue the PASPGP-1 as PASPGP-2, with or without modifications, will be based on an evaluation of the probable impacts including cumulative impacts of the proposed PASPGP-2 on the public interest. That decision will reflect the national concern for the protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed

PASPGP-2. Any comments received will be considered by the Corps of Engineers to determine whether to reissue with modifications, reissue without modifications or not reissue the PASPGP. To make this decision, comments are used to assess impacts on endangered species, cultural resources, water quality, general environmental effects, and the other public interest factors listed above. Comments will be used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA). Comments will also be used to determine the overall public interest of the proposed activity.

A public Hearing has been scheduled for May 8, 2000 from 7 – 9 PM. The hearing will be held at the Rachel Carson State Office Building Auditorium, 400 Market Street, Harrisburg, Pennsylvania. The purpose of the Public Hearing is to receive oral or written comments that will enable the District Engineers to evaluate the proposed PASPGP-2's impacts on the public interest. All interested parties, including representatives of Federal, State, and local governments, and private individuals and organizations, are invited to be present or to be represented. Each will be given an opportunity to express their views regarding the proposed general permit. Each person wishing to make an oral statement is asked to complete a speaker's card as he or she enters the auditorium. Written comments and information provided by interested parties must be received by the Baltimore District Engineer by May 22, 2000, to be included in the official record.

Water Quality Certification is required in accordance with Section 401 of the Clean Water Act prior to the issuance of the PASPGP-2. The PADEP will be issuing a separate notice in the Pennsylvania Bulletin regarding 401 Water Quality Certification.

Coastal Zone Certification is required in accordance with the Pennsylvania Coastal Zone Program. The PADEP will also be issuing a separate notice in the Pennsylvania Bulletin regarding Coastal Zone Certification.

A preliminary review of the PASPGP-2 indicates that processing procedures and conditions are sufficient such that authorized work will not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of the PASPGP-2 continues, additional information may become available which could modify this preliminary determination.

The PASPGP-2 is conditioned to assure that on a case by case basis, cultural resources listed in the latest published version of the National Register of Historic Places or properties listed as eligible or potentially eligible for inclusion therein will be given the consideration required by Section 106 of the National Historic Preservation Act.

It is requested that you communicate the foregoing information to any persons known by you to be interested and not being known to this office who did not receive a copy of this notice. Questions and comments may be directed to Mrs. Patricia Strong, Baltimore District Corps of Engineers, P.O. Box 1715, Pennsylvania Section, Baltimore, Maryland 21203. A copy of the current version (December 1995, reissued March 2000) of the PASPGP-1 is attached, which shows the proposed changes highlighted in bold type. Comments are requested by May 22, 2000.

For the District Engineer:

